

Procedural History

Prior to entry of this paper, the following claims were pending: 1 – 16. In this paper, claims 1 – 16 have been canceled, no claims have been amended, and new claims 17 – 36 have been added.

After entry of this paper, claims 17 – 36 are now pending.

Claim objections under 37 CFR § 1.75(c)

Claims 1 through 16, inclusive of claims 4 and 8 through 16, are cancelled with this paper and new claims are presented which the applicant believes do not present multiple dependent claims in improper form.

Claim rejections under 35 U.S.C. § 112

Claims 1 through 16, inclusive of claims 5 through 8 and 13 through 16 are cancelled with this paper and new claims are presented which the applicant believes do not present indefinite claims.

Claim rejections under 35 U.S.C. § 101

Claims 1 through 16, inclusive of claims 5 through 8 and 13 through 16 are cancelled with this paper and new claims are presented which the applicant believes are presented to statutory subject matter.

Claim rejections based on 35 U.S.C. § 102(b); anticipation by Husemann

While new claims are being offered with this paper, respectfully, the applicant offers an analysis of the examiner's rejection of the previous claims 1, 5, 9, and 13 as being anticipated by Husemann (US Publication No. 2001/0037264), relative to the claims presented in this paper.

In the disclosed invention, a telephone is the sole equipment needed to select and order the goods and/or services, a telephone (an SMS capable telephone) is the sole equipment used to confirm the order, and a telephone is the sole equipment used to provide and control access to the goods and/or services which are purchased thereby. In contrast, in Husemann, a telephone is NOT used to select and order the goods and/or services, a telephone (including an SMS capable telephone) may be used to confirm the order, and a telephone is NOT used to provide and control access to the goods and/or services which are purchased thereby. This difference in equipment leads to method steps and system components not disclosed in Husemann, as discussed further below.

Remarks/Arguments -- Continued

Husemann describes a method and corresponding system in which a user utilizes a customer system (variously depicted as 40 and 70, respectively, in Figures 5 and 6) to select deliverables and to invoke the checkout process (steps 20 and 21 in Fig. 3; steps 30 and 31 in Fig. 4). Selection of deliverables and invocation of the checkout process in Husemann is not accomplished by calling a phone number publicized by a merchant, it is accomplished by accessing the "internet or world wide web," Husemann, paragraph 0041, through use of the "customer system." The "customer system" is explicitly defined in Husemann as follows:

[0032] Customer system: A customer system is a network-attachable device that has some computing capabilities. Examples are personal computers (PCs), workstations, servers, laptops, personal digital assistants (PDAs), network computers, and so forth. Other examples are WAP phones, palm pilots, belt computers, pocket computers, wrist watches with integrated computer, electronic wallets, car computers, etc. The network connection is either established via some cable or fiber, or by means of an infrared or RF link. A customer system can also be an aggregation of several devices. This customer system is suited for operation by a customer desiring to tan some service or to buy some goods via a network. The customer system may be a general purpose device especially programmed to perform the steps of the present invention or a device equipped with appropriate software that controls the device to perform these steps. In addition, a customer system may comprise a database entertaining a list of transactions, a call-in unit that connects to a telephone network, and other devices or units.

The examples in Husemann of the "customer system" are exclusively devices which are capable of communicating over the Internet. Please note that "WAP" is an open international standard for applications that use wireless communication and which enables access to the Internet from a mobile phone or PDA. A "WAP phone" is a phone which includes a "WAP browser" which uses the Internet to access "WAP sites." See, for example, the Wikipedia entry for "WAP" at <http://en.wikipedia.org/wiki/WAP> and/or the "Wireless Application Protocol WAP 2.0 Technical White Paper" supplied in an IDS which accompanies this paper. A "WAP phone" should not be confused with an SMS enabled telephone. Contrast also Husemann, paragraph 0086, with Husemann, last two sentences of paragraph 0071.

Husemann exclusively describes using the "customer system" to select deliverables and invoke a checkout process through use of the Internet. See for example, Husemann at 0041, 0042, 0043, 0051, 0052, 0053, 0060, 0063. Husemann describes that the customer, via the "customer system," is provided with a "confirmation address," "e.g., a special confirmation phone number or special confirmation e-mail address," Husemann 0055. See also Husemann 0065. The customer in Husemann confirms the order by using a "mobile phone" (a defined term in Husemann which does not overlap with the "customer system") to call the confirmation phone number or to send an email to the special confirmation e-mail address. However, the customer in Husemann does not use the "mobile phone" to select deliverables and invoke the checkout process, as is the case with the present invention.

Remarks/Arguments -- Continued

The examiner observed in the 1st office action in this application that Husemann provides that an SMS message may be sent to the customer in Husemann and that the customer may respond to this SMS message with an SMS message to conform the order previously placed using the "customer system" (paragraphs 0071 – 0074, 0078, 0083 – 0085, and 0088). However, Husemann makes clear that the SMS message sent to the customer is an order confirmation send after the deliverables having been selected and the checkout process invoked through use of the "customer system" –the customer in Husemann only calls the merchant (or sends the merchant an SMS message) to confirm the previously placed order, not to select deliverables, as in the present invention. The claims presented with this paper make clear that the present invention is addressed to a method and corresponding system in which customers call a phone number to select deliverables, unlike in Husemann, where the call from the customer is to confirm an order previously placed using Husemann's "customer system."

The present invention offers several advantages relative to Husemann, among them that the customer is only required to be equipped with an SMS capable phone, rather than requiring, as in Husemann, that the customer also have, in addition to a "mobile phone," the more complex and expensive "customer system" (see, for example Husemann paragraph 0075). The present invention may not be suitable for selling more complex goods and/or services as contemplated in Husemann, but the present invention opens up greater opportunities with respect to the sale of simpler goods and/or services, such as the sale of ringtones, telephone display wallpapers, and time-based access to services which may be provided through a telephone, such as telephone chat-based services.

The claims presented in this paper also present additional steps and limitations, such as that access to the goods and/or services which are sold pursuant to the present invention is through use a telephone number or short code. In contrast, Husemann does not describe providing access to the goods and/or services through use of a telephone number or short code. Husemann describes, "[i]f the deliverable is a tangible item, then it is prepared for shipment and delivered to the customer by mail or courier... When the deliverable is an intangible item, the server 46 may simply make it available for download by the customer system 40 (pull approach), or the server 46 may send it to the customer system 40 (push approach)." Husemann, para. 0067. Obtaining a deliverable via a download on a "customer system" is different from using a telephone number or short code to use a product or service for a period of time.

Much as the benefits and limitations noted above with respect to use of a telephone call to place the initial order, making available use of a goods and/or services through a telephone number or short code places limits on the types of goods and/or services which may be sold thereby (e.g. that it must be possible to use the goods and/or services immediately through a phone call or short code), but facilitates such sales by removing the requirement that the customer have a "customer system" to receive an

Remarks/Arguments -- Continued

intangible and by providing that continued use of the goods and/or services by the customer may be terminated upon the lapse of an agreed period of time by terminating the customer's continued use of the telephone number or short code. As noted by the examiner in the office action, a time period for performance of a contract or a time period in which to provide a service is often an inherent part of many agreements or transactions, but use of a telephone number or short code and the discontinuation of such use upon lapse of the agreed time period is not. The present invention provides that use of a good and/or service is provided through a phone, not unlimited possession of the good and/or service, and the present invention provides that such use may be controlled through the phone number and/or short code provided to enable such use.

The claims presented in this paper also present additional steps and limitations, such as that a PIN code may be provided to the would-be-purchaser in the present invention and that the PIN code may be used in conjunction with use of a telephone number or short code to provision the goods and/or services. Husemann discusses a PIN number (see, for example, paragraphs 0091 and 0099), but only as a mechanism for authenticating the user of a phone or the use of a phone (paragraph 0099), but not as an identifier to be presented to a merchant to identify a previously arranged purchase and sale of a good and/or service. Use of a PIN code in such a manner provides a number of benefits, such as additional security to assure that the party using a telephone number with which additional fees are associated is the intended party. Use of a PIN code in such a manner also provides that the party handling the phone call and providing the would-be-purchaser with access to the goods and/or services may be a different party than the one who actually supplies the goods and/or services. Use of a PIN code is also useful in managing relationships with affiliated parties who may be involved in the supply chain.

The claims presented in this paper also present additional steps and limitations, such as that one or more additional SMS messages may be sent to the would-be-purchaser to confirm continued utilization of the goods and/or services for additional periods of time. Such additional SMS messages are sent after an initial two-stage acceptance process has already played out and allow the would-be-purchaser to continue the chat session or to otherwise continue to utilize the goods and/or services without having to go through the more lengthy initial call-in and confirmation step. Such a convenience can be significant in the continued utilization of goods and/or services which are easily terminated (merely by hanging up a phone) and which have a low-price point.

Respectfully submitted,

NEWMAN & NEWMAN

By 

Martin Spencer Garthwaite
Reg. No. 57032